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February 6, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 28, 2006

Case Number: TSO-0382

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be granted. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be granted.

I. Background

The individual held a DOE security clearance for several years until she left her employment with a DOE contractor (Contractor #1) on May 24, 2004. On May 26, 2004, the individual secured employment with another DOE contractor (Contractor #2) and Contractor #2 requested that the DOE reinstate the individual's security clearance.

Upon receipt of the request for reinstatement, a local DOE security office (LSO) sent the individual a Letter of Interrogatory (LOI) inquiring about the circumstances of the individual's employment termination from Contractor #1. After receiving the individual's LOI responses, the LSO conducted a Personnel Security Interview (PSI) (June 2004 PSI) with the individual to discuss her possible falsification of a travel voucher during her employment with Contractor #1. After the June 2004 PSI, the LSO recommended that a full field background investigation be conducted on the individual because she had made some inconsistent statements during the June 2004 PSI. After it received the background investigation report, the LSO conducted a second PSI in March 2005 (March 2005 PSI) to discuss additional inconsistencies that it had uncovered during the investigation. Subsequently, the LSO recommended administrative review under 10 C.F.R. Part 710.

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In accordance with the regulations, the LSO sent the individual a letter (Notification Letter) advising her that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. 10 C.F.R. § 710.21. The LSO also advised that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (l) (hereinafter referred to as Criteria F and L respectively).²

After receiving the Notification Letter the individual, through her attorney, filed a written response to the Notification Letter and exercised her right under the Part 710 regulations by requesting an administrative review hearing. On May 3, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing within the regulatory time frame provided in 10 C.F.R. § 710.25 (g). At the hearing, eight witnesses testified. The individual presented her own testimony and that of seven witnesses; the LSO presented no witnesses. In addition to the testimonial evidence, the LSO submitted 34 exhibits into the record; the individual tendered three exhibits.

II. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

² Criterion F concerns information that a person "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31." 10 C.F.R. § 710.8 (f). Criterion L relates in relevant part to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . ." 10 C.F.R. § 710.8(l).

III. Findings of Fact

This case involves: (1) some alleged fraudulent expenses submitted by the individual to Contractor #1 for a business trip that she took in April 2004, (2) the individual's alleged false and misleading statements to the DOE regarding the circumstances surrounding her termination from Contractor #1, (3) the individual's alleged improper use of her government-issued credit card, and (4) the individual's alleged misleading statements to her supervisor about matters relating to the April 2004 business trip. Many of the facts in this case are disputed and I will note them as appropriate.

At the heart of this case is a business conference that occurred in April 2004. The record reflects that the conference in question covered a three-day period, Tuesday, April 13, 2004 through Thursday, April 15, 2004. Exhibit (Ex.) 21. An "ice-breaker" session preceded the conference on Monday evening, April 12, 2004. *Id.* The individual was scheduled to make a presentation at the conference on Tuesday afternoon, April 13, 2004. *Id.*

In anticipation of her travel, the individual sent her secretary an e-mail on March 22, 2004 asking that the secretary make flight reservations for travel to the conference on Friday, April 9, 2004 with a return on Thursday, April 15, 2004. Ex. 33 at 15. The individual claimed that she verbally told her secretary of her plans to be on personal travel for a portion of the trip. Transcript of Hearing (Tr.) at 60. The individual's secretary testified that the individual did not advise her that she was taking personal leave during the trip in question. Tr. at 142.

The secretary prepared the individual's travel authorization based on her understanding that there was no personal component to the travel in question. The secretary inadvertently failed to electronically forward the individual's travel authorization for approval to the individual's managers prior to the individual's departure on April 9, 2004. Ex. 21.

On Monday, April 12, 2004, the individual's supervisor learned that the individual's travel authorization had not been transmitted to her for approval and that the individual had departed on Friday, April 9, 2004. When the individual's authorization was finally routed to the supervisor for her approval, the supervisor noted that the individual had designated her official travel days as Friday, April 9 through Thursday, April 15, 2004. The supervisor then checked on the travel departure dates of other employees who were scheduled to attend the conference and learned that one was scheduled to depart on Sunday, April 11, 2004 (the person in charge of setting up for the conference) and the others on Monday, April 12, 2004. *Id.* According to the individual's supervisor, the individual had told her a few weeks before the conference that she would be going to the conference early to help "set up" for the event. Ex. 21. The supervisor was surprised therefore when she learned that the individual had departed two days before the person who was assigned to "set up" for the conference. The individual denies telling her supervisor that she was going to the conference early to set up. Ex. 33 at 16, Tr. at 89.

Due to an emergency telephone call,³ the individual did not make her presentation at the conference. Instead, she arranged for a co-worker to make the Power Point presentation in her stead. When the individual returned to the office after the conference, her supervisor asked her how her presentation went and the individual responded, “[f]ine. It went okay.” Ex. 21. When the supervisor asked her if she had used Power Point or overheads, the individual responded that she had used Power Point. *Id.*

Regarding the travel voucher at issue, the individual gave her secretary all her receipts for the conference and requested that she prepare a travel voucher. Tr. at 65. The individual did not make any notations on the receipts or anywhere else denoting that any of the expenses were personal in nature. Accordingly, the secretary prepared a voucher claiming reimbursement for per diem allowances and hotel rooms for seven days, a rental vehicle, and an airport shuttle. Ex. 23. The individual claimed that she did not review the voucher or its supporting receipts before she certified that the claimed travel expenses were accurate. Tr. at 82. When asked in May 2004 why she had not reduced her claimed expenses to reflect her personal costs, the individual replied that she did not know why. Ex. 19. In June 2004, the individual was asked again why she had included personal expenses in her travel voucher and she replied that she had trusted her secretary to deduct the personal days. Ex. 34 at 37.

On May 6, 2004, the individual’s management requested that an audit be performed on the individual’s travel expenses for the April 2004 conference. Ex. 19. The auditors reviewed the expenses claimed by the individual for the trip and concluded that the individual had submitted almost \$900 in personal expenses for payment by Contractor #1.

As a result of the improprieties uncovered by the auditors, Contractor #1 offered the individual an opportunity to resign or be fired. On May 20, 2004, the individual executed a “Resignation In Lieu of Termination Agreement” and left the employ of Contractor #1. On May 26, 2004, the individual accepted a job with Contractor #2 and completed a Questionnaire for National Security Positions (QNSP) on May 26, 2004. Question 22 on the QSNP asks whether you have: (1) been fired from a job, (2) quit a job after being told that you would be fired, (3) left a job by mutual agreement following allegations of misconduct, (4) left a job by mutual agreement following allegations of unsatisfactory performance, or (5) left a job for other reasons under unfavorable circumstances. Ex. 26. The individual indicated that she had left a job for other reasons under unfavorable circumstances (code 5 on the QNSP) and added that she had resigned because of a hostile work environment. *Id.* The LSO sent the individual a LOI and asked her several questions. Ex. 16. As elaboration on what she meant by “hostile work environment,” the individual provided the following response:

I felt my boss put me under unnecessary stress and I was not being treated fairly. We had conflicts over this and I felt she was undermining my credibility and integrity and I resigned.

Ex. 16 at 1.

³ The individual was absent from the conference for a two-hour period after she took the telephone call. Ex. 21.

When queried in the LOI whether she had been accused of wrongdoing by her former employer, the individual responded negatively, adding “but I was questioned regarding a travel statement that was completed incorrectly but later resolved. I felt my boss was undermining my integrity.” *Id.*

Subsequently, on February 15, 2005, the individual completed another QNSP in which she provided the same response to Question 22 that she did on the May 26, 2004 QNSP. Ex. 25.

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. After due deliberation, I have determined that the individual’s access authorization should not be granted. I cannot find that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings I make in support of this decision are discussed below.

A. Criterion F

1. The Allegations and Associated Security Concerns

To support Criterion F in this case, the LSO cites the individual’s responses on three security forms, *i.e.*, her May 2004 QNSP, her February 2005 QNSP and her May 2004 LOI. In the two QNSPs, the individual stated that she left the employ of Contractor #1 because of a hostile work environment. In her LOI, the individual denied that she had been accused of any wrongdoing by Contractor #1. However, in subsequent personnel security interviews, the individual admitted that she had resigned from Contractor #1 following allegations of misconduct. I find that the individual’s failure to provide full, frank and truthful responses on the security forms mentioned above raises questions about her reliability, trustworthiness and ability to protect classified information. *See* Guideline E (15) of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House. For this reason, I find that the LSO properly invoked Criterion F as a basis for not granting the individual a security clearance.

2. Mitigating Evidence regarding Criterion F Allegations

At the hearing, the individual admitted that Contractor #1 told her that her travel voucher improprieties provided sufficient grounds for the company to terminate her and that it would allow her to resign instead of being terminated. Tr. at 98. She maintained, however, that the Human Resources (HR) Manager for Contractor #1 told her that she could in good faith tell people that she had resigned. *Id.* at 99. She claimed further that the HR Manager told her that the travel fraud allegations “would be disregarded” if she signed the “Resignation in Lieu of Termination.” *Id.* She also added that she felt that she had been working in a hostile environment so she felt comfortable listing that as the

reason for her resignation.⁴ In addition, the individual testified that before she completed her 2004 QNSP she talked to a former co-worker about how to respond to the questions at issue. *Id.* at 102-103. That co-worker testified that she did not recall a conversation in which she provided advice on how to complete the QNSP in question. *Id.* at 185. She added that if she did discuss the matter, she would have advised her to state clearly the circumstances surrounding her termination from Contract #1 and to provide details. *Id.* Under cross-examination, the former co-worker testified that she told her that she “probably need[s] to put hostile work environment.” *Id.* at 188.

3. Hearing Officer Evaluation of Criterion F Evidence

Based on the evidence before me, I find that the individual has not mitigated the security concerns associated with her deliberate omission of significant information on the three security forms at issue in this case. In making this determination, I considered that the individual did not make prompt, good-faith efforts to correct her falsifications when confronted with the facts either during the 2004 PSI or the 2005 PSI. I also considered that the individual deliberately omitted significant information three times in a nine month period, between May 2004 and February 2005. Moreover, I found that the individual had reflected carefully before she chose to complete the three security forms in the manner in which she did. Specifically, she consulted with a former co-worker about the matter. Unfortunately, to the extent the individual relied on her friend’s advice, I found that her friend was not in a position to provide official advice to the individual on this matter and I cannot excuse the individual’s conduct on this basis. Regarding the alleged statements made by the HR Manager, I found first that it is irrelevant that the HR Manager told the individual that she could tell people that she had resigned from Contractor #1. The individual knew that Contractor #1 would have fired her because of her travel voucher irregularities and for this reason she should have indicated on her QNSP that she quit after being told that she would be fired.⁵ As for her argument that she relied on the HR Manager’s statement⁶ that Contractor #1 would disregard the allegations of wrongdoing if she resigned in lieu of being terminated, I found that this statement did not relieve the individual of accurately reporting to the DOE the circumstances surrounding her termination. Moreover, I found that the individual was uniquely situated because of her past job responsibilities to understand how to complete security forms properly. Finally, I found that the individual does not acknowledge the error of her ways. Instead, she rationalized her actions and manipulated the facts in an attempt to absolve herself of responsibility for any wrongdoing. This conduct only underscores the security

⁴ The individual described to a personnel security specialist what she perceived to be a “hostile work environment” while she was employed by Contractor #1. Ex. 34 at 13-19. Specifically, she maintained that for a two year period, 2002-2004, she felt under a great deal of stress because of a heavy caseload and her perception that others in her group were receiving preferential treatment. *Id.*

⁵ Had the individual selected “Code (3)” on the QNSP, i.e., “left a job by mutual agreement following allegations of misconduct,” this designation would have been appropriate as well.

⁶ The HR Manager did not testify at the hearing so I am unable to confirm the accuracy of the individual’s statement in this regard. In my opinion, corroboration is very important in this case because I found the individual to be a very unreliable historian.

concerns associated with Criterion F in this case. For all the foregoing reasons, I find that the LSO's security concerns under Criterion F remain at issue.

B. Criterion L

1. The Allegations and Associated Security Concerns

With respect to Criterion L, the LSO relies on the following information. First, it alleges that the individual knowingly submitted a travel expense voucher to Contractor #1 that included \$899.82 in personal expenses. Second, it contends that the individual admitted during a PSI that she had used her government issued credit card for unofficial personal expenses even though she knew that she was prohibited from so doing. Third, it submits that the individual misled her supervisor when she told her that she had made a Power Point presentation at the conference in April 2004. Fourth, it states that the individual told her supervisor that she needed to leave early for the conference in order to assist in setting up for that conference when she in fact never engaged in that pre-conference activity. I find that the individual's conduct with regard to each of the four matters under scrutiny raises questions about her honesty, reliability and trustworthiness and ability to protect classified information and served as a legitimate basis for not granting the individual's security clearance.

2. Mitigating Evidence regarding Criterion L Allegations and Hearing Officer Evaluation of Evidence

a. Submission of Fraudulent Travel Voucher

The individual argues that it was her secretary and not she who erred in failing to make provisions for the individual's personal travel when the secretary prepared both the travel authorization and travel voucher in April 2004. As noted in the Findings of Fact in Section III above, the individual maintains and the secretary contests that the individual verbally told the secretary that she was taking personal time in conjunction with her official travel. In the end, I have determined that the responsibility to ensure the accuracy of the travel documents rested with the traveler. The individual admitted at the hearing that she did not denote on her hotel bill which days could be charged to Contractor #1 and which days should be charged as personal expenses. She also failed to tell the secretary that she used the rental vehicle for personal use only, not official business. She also admitted that she provided the secretary with receipts for all the expenses that she incurred during her trip, both personal and business. Moreover, the individual admitted that she certified the accuracy of the travel voucher and the supporting documentation without reviewing the voucher or ensuring that the receipts were included for the official component of her trip.

With regard to the individual's contention that she was not given the opportunity to modify the voucher before the audit occurred, I find it without merit. As the individual's secretary testified, the individual had the opportunity to modify the voucher before she certified its accuracy and it was submitted for payment. Tr. at 142. Had the individual reviewed the travel voucher before signing and certifying the document, she would have uncovered the errors and could have insisted that the document be modified.

With regard to the speculation that the supervisor chose not to exercise her discretion and call back the voucher after the supervisor suspected an error, the record shows that the individual's management requested an audit of the individual's travel voucher even before it had been submitted because of some "red flags." *Id.* at 75. Those "red flags" included the individual's failure to communicate clearly or at all to her immediate supervisor about her personal travel plans prior to the April 2004 business trip in question, her misleading statements about her participation in official pre-conference activities, and her obfuscation of the facts relating to the Power Point presentation.

In evaluating the evidence, I considered as a positive factor that the individual had not previously submitted a fraudulent travel voucher while she was employed by Contractor #1. In fact, the chief auditor scrutinized the individual's travel between September 2003 and May 2004 (Ex. 19) and found problems only with the trip at issue in this case.⁷ I also considered as positive evidence the testimony of a former supervisor that he had "no problem with [the individual's] integrity." Tr. at 180. Against these positive factors, I weighed the following negative ones. First, the individual has failed to accept any responsibility for the errors on the travel voucher. Instead, she blamed her secretary for including her personal expenses on the travel voucher and her supervisor for failing to allow her an opportunity after the audit to remedy her errors. Second, other co-workers who testified at the individual's request stated that they knew that they were not permitted to submit receipts for personal travel (Tr. at 46) and should segregate their personal expenses from business expenses. *Id.* at 199. This testimony convinces me that the individual knew how she should have handled her travel voucher. Third, the individual's action in certifying her travel voucher without reviewing it or the accompanying receipts is very problematic. Her action in this regard demonstrates her unreliability. Fourth, I also gave considerable weight to the individual's overall lack of candor with regard to other issues involved in this case. With regard to the travel voucher, the chief auditor testified that the individual had provided her with different versions of events when confronted with the incredulity of her explanations for commingling the personal and business expenses. *Id.* at 166. I also found the individual's explanations at the hearing on this matter to be unconvincing. In the end, I found that the individual had not mitigated the security concerns associated with her submission of a travel voucher that included \$900 in personal expenses.

b. Misuse of Government Credit Card

The LSO alleges that the individual used her government issued credit card for unofficial personal expenses. The LSO does not enumerate what specific personal expenses are at issue but rather refers to the exchange between the individual and the personnel security specialist during the 2004 PSI. *See* Ex. 34. From my reading of the 2004 PSI, it appears that the LSO believes that it was improper for the individual to have charged two nights at the hotel where the conference was held and the rental car on her government-issued credit card.

⁷ There is no evidence showing how many business trips that the individual took during her tenure with Contractor #1.

The chief auditor who reviewed the trip in question testified that most people do not request a separate hotel bill when they are combining personal and business activities in the same trip. Tr. at 151. The auditor did not question the propriety of the individual's use of the government credit card for her hotel; she questioned the individual's submission of the entire hotel bill for reimbursement.⁸ It is unclear from the record whether the individual was prohibited from using the government credit card to charge her entire bill. What she clearly was prohibited from doing was seeking reimbursement for the personal component of the hotel bill from Contractor #1.

As for the rental car, it appears from the record that the individual originally intended to use the rental car for official travel during a portion of her trip. Ex. 33 at 10. She apparently did not realize at the time she rented the car and provided her government credit card how close the hotel was to the airport. Ex. 19. After renting the car, the individual checked into the hotel. At that point, she realized that close she was close to the airport. However, over the course of the weekend that followed, the individual and a companion drove the rental car 623 miles. The individual returned the car on Monday before the start of the pre-conference activities. Ex. 19. The individual does not explain why she did not ask the rental company to replace the government credit card on file with her personal credit card when she returned the car. Since the individual has provided no evidence to mitigate her improper use of the government credit card for the rental car, I must find that the individual has not allayed the security concerns associated with this matter.

c. Misrepresentations to the Supervisor

The individual claims that when she told her supervisor that she had made the Power Point presentation at the conference, she meant that she gave her presentation to another person to make. Ex. 33 at 19. I found the individual's explanation disingenuous, noting its striking similarity to other semantics she had used to justify other actions in this case.⁹

As for the individual's alleged statements to her supervisor about her intent to depart early for the conference for the purpose of assisting with the "set up" activities, the individual denies making this statement. Tr. at 89. At the hearing, the individual admitted that she told her secretary to put her on the same itinerary as Ms. X, the person who was designated to set up for the conference. *Id.* at 77-78. When confronted at the hearing with the implication of this statement, the individual responded, "I never really told her it was something for sure." *Id.* After carefully considering the individual's demeanor and her testimony, I determined that the individual had not convinced me that she had not misrepresented some facts relating to the travel in question.

⁸ The Travel Manual for Contractor #1 states that it does not object to employees combining official and personal travel as long as the primary purpose of the travel is business. Ex. A. The portion of the Manual submitted does not address whether an employee can use a government issued travel card to pay for combined official and personal travel expenses such as a hotel bill.

⁹ Specifically, in May 2004 the individual told the auditors that she did not plan for the personal travel (Ex. 19). Under cross-examination at the hearing, the individual stated that what she meant by that statement was that [she] "didn't fill out the form [travel authorization]." Tr. at 110.

V. Conclusion

The totality of the evidence in this case, *i.e.*, the individual's falsification of three security documents and a travel voucher, her misuse of the government credit card to rent a car, and her misleading and perhaps duplicitous statements regarding various matters discussed in this Decision, raise serious security concerns under Criteria F and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO under Criteria F and L. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: February 6, 2007